

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Zajakowski Uhl	Team: Squad #10	CCRB Case #: 202004359	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 7:00 PM	Location of Incident: Union Square between 14th and 15th Street	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 3:24 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/17/2020 12:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An Officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Michael Lam	00000	947150	SRG 1
2. LT Jermaine Oden	00000	939136	009 PCT
3. POM Scott Pariona	23554	963198	040 PCT
4. SGT Brian Verkay	02358	935930	SRG 1
5. CPT Julio Delgado	00000	918927	SRG 2
6. DI Andrew Ventrella	00000	896907	SRG
7. AC Martine Materasso	00000	925686	CT BUR

Officer(s)	Allegation	Investigator Recommendation
A. An Officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
B. An Officer	Force: An officer used physical force against § 87(2)(b)	
C. An Officer	Force: An officer restricted § 87(2)(b)'s breathing.	
D. Officers	Abuse: Officers stopped § 87(2)(b)	
E. Officers	Abuse: Officers failed to provide § 87(2)(b) with a business card.	

Case Summary

On June 1, 2020 § 87(2)(b) filed the following complaint with IAB, where it received original log #2020-14624. On June 17, 2020, the case was spun off to the CCRB, where it received original case #202004359.

On May 31, 2020, between approximately 7:00 p.m. and 10:15 p.m., § 87(2)(b) was eating in Union Square Park when a large group of protestors approached him. He attempted to avoid the protestors by crossing 14th Street but walked into a line of eight-ten police officers in riot gear. One of the officers told § 87(2)(b) to move out of the way, and when § 87(2)(b) responded, “I’m not a protestor,” the officer allegedly told § 87(2)(b) to, “Shut the fuck up” (**Allegation A: Discourtesy – Word,** § 87(2)(g)). One of the officers allegedly slammed into § 87(2)(b)’s upper back and brought him to the ground, where § 87(2)(b) landed on his face and stomach (**Allegation B: Force – Physical Force,** § 87(2)(g)). The same officer allegedly then used his hand to force § 87(2)(b)’s face into the ground, so that § 87(2)(b) was unable to breathe for about five seconds (**Allegation C: Force – Restricted Breathing,** § 87(2)(g)). A second officer then put plastic handcuffs on § 87(2)(b). The officers then escorted § 87(2)(b) to the back of a police vehicle parked between 14th and 15th Streets (**Allegation D: Abuse of Authority – Stop,** § 87(2)(g)). Neither officer provided § 87(2)(b) with a business card (**Allegation E: Abuse of Authority – Failure to provide RTKA card,** § 87(2)(g)). Two other officers then drove § 87(2)(b) to his shelter in the police vehicle. § 87(2)(b) was not arrested or summonsed.

Body Worn Camera footage from the general vicinity of Union Square Park and 14th Street and 5th Avenue on May 31, 2020 was obtained by the investigation for this case and was summarized by the investigation upon receipt (**Board Review 1, 2, 3, and 4**). None of the footage viewed captured § 87(2)(b) or his allegations. There was no other video of this incident.

Findings and Recommendations

§ 87(2)(g)

Allegation A: Discourtesy: An officer spoke discourteously to § 87(2)(b)
Allegation B: Force: An officer used physical force against § 87(2)(b)
Allegation C: Force: An officer restricted § 87(2)(b)’s breathing.
Allegation D: Abuse of Authority: Officers stopped § 87(2)(b)
Allegation E: Abuse of Authority: Officers failed to provide § 87(2)(b) with a business card.

Known facts and general descriptions

§ 87(2)(b) conducted a phone interview on June 25, 2020 (**Board Review 5**). This interview differed from the original complaint to IAB (**Board Review 6 and 16 and 17**) and the first phone statement § 87(2)(b) gave to the investigation (**Board Review 7**) in that § 87(2)(b) noted a different incident location. He also described the time alternately as being around 7:00 p.m., around 8:00 p.m., and around 10:15 p.m.

In his sworn statement, § 87(2)(b) stated that on May 31, 2020, around 8:00 p.m., he went to the McDonald’s on 36th Street and 6th Avenue and purchased some food. He then took the train from 34th Street Herald Square to 14th Street, Union Square. When he arrived at Union Square, he got out of the train station and walked to Union Square Park and sat on a ledge close to the train station exit.

and ate. About two to three minutes later, a large crowd of protesters approached so he attempted to move out of the way and crossed the street opposite the exit. As he crossed the street, a line of about eight to ten police officers in riot gear were walking down the street. One of the officers told § 87(2)(b) to get out of the way and move back and § 87(2)(b) responded, “I’m not a protestor, I’m not in the way, I want to eat my food and I didn’t do anything wrong.” One of the officers, § 87(2)(b) could not remember which, responded “I don’t have time for this.” § 87(2)(b) continued to argue with the officers in the line, and one of them told him to “Shut the fuck up.”

Just then, an officer slammed into § 87(2)(b)’s upper back, causing § 87(2)(b) to land on his face and stomach on the sidewalk. It was unclear whether § 87(2)(b) saw the officer who pushed him. Another officer then grabbed § 87(2)(b)’s wrists from behind his back, while he was still on the ground, and put him in “plastic handcuffs” The first officer then used his hand to force § 87(2)(b)’s face into the ground, so that § 87(2)(b) was unable to breathe for about five seconds. He heard the second officer say, “I’ve got this,” and § 87(2)(b) felt the officer’s hand come off his face.

These two officers then escorted § 87(2)(b) to the back of a police van that was parked between 14th and 15th Streets. Two different officers were in the driver’s seat of the vehicle. They waited in the vehicle for about 15 minutes and § 87(2)(b) heard one officer asking the other, “should we take him or leave him?” § 87(2)(b) told the officers that he had a curfew of 10 p.m. at his residential facility and was worried about getting home on time. § 87(2)(b) gave his address and the officers drove § 87(2)(b) back to his residence at § 87(2)(b).

Around 3 a.m. the next day, § 87(2)(b) called IAB to file a complaint against the officers and then called an ambulance to take him to the hospital for his injuries.

§ 87(2)(b) described the four officers he was able to remember from the incident. He described the subject of the force as a skinny black male in uniform, around 30 years old and between 6’3” and 6’5”. He described the second subject as a muscular white male in uniform who was around 30 years old. He described the two officers in the police vehicle as a short Hispanic male in uniform and a skinny black male.

Between June 29, 2020 and July 14, 2020, the investigation called § 87(2)(b) five times to procure a follow up statement for additional details to assist with identifying the officers in this incident. § 87(2)(b) did not answer these calls or respond to the voicemail requests for him to call the investigation back.

BWC and TARU Footage

The first Body Worn Camera footage request for this case was returned as negative on July 1, 2020 (**Board Review 8**). The investigation expanded the parameters of the BWC request to any videos taken within the confines of the 13th precinct on the evening of May 31, 2020 and any additional videos within an extended time frame to 10 p.m.

This search yielded six Body Worn Camera videos in the vicinity of the alleged incident (**Board Review 1**) These videos were summarized by the investigation upon receipt (**Board Review 2**) However, none of these videos captured § 87(2)(b) or his allegations against uniformed members of the NYPD. None of the groups of officers captured in the footage match § 87(2)(b)’s specific descriptions.

The investigation submitted an additional request for BWC with expanded parameters to include the vicinity of 14th Street and 5th Avenue. This search yielded 42 additional BWC videos, which were summarized by the investigation upon receipt. **(Board Reviews 3 and 4)**. Six of these videos took place in the vicinity of the alleged incident, around 14th Street and 5th Avenue or Union Square. None of these videos captured § 87(2)(b) or his allegations against uniformed NYPD officers, and none of the officers seen in these videos match § 87(2)(b)'s descriptions.

On June 29, 2020, the investigation requested TARU footage from fixed cameras, hand-held operators, and mobile cameras, recorded from the Black Lives Matter protests on May 31, 2020, between 8:00 p.m. and 9:30 p.m. in the vicinity of Union Square Park with negative results. The Case Worksheet from the concurrent police investigation into this case also confirmed that no TARU footage was available from cameras in the vicinity of Union Square Park during this incident. The police investigator also noted that LMSI confirmed there was no footage **(Board Review 9)**.

The investigation then sent an updated TARU request with expanded parameters to include 14th Street and 5th Avenue and an expanded time frame from 6:00 p.m. to 11:30 p.m. This search also returned negative results **(Board Review 10 and Board Review 25)**.

NYPD Documents Reviewed

No TRIs **(Board Review 11)**, Summons **(Board Review 12)**, UF-250 **(Board Review 13)**, or MTOPs **(Board Review 14)** were prepared for § 87(2)(b) on May 31, 2020. Post maps were not prepared for protests in Manhattan on the date of this incident and the PBMS detailed roster **(Board Review 15)** was incomplete and insufficient to narrow down the extensive list of possible subjects.

Concurrent Investigations

The investigation received the concurrent patrol boro investigation into the incident on August 19, 2020 **(Board Review 9)**. The case was subsequently assigned to Sgt. Barbie Torres of Patrol Boro Manhattan South. The file included three calls to § 87(2)(b) one of which he answered, but was unable to provide details on the incident. The report also noted that § 87(2)(b) did not see the officer who pushed him to the ground or held his face, but assumed it was one of the officers standing near him. The case file noted that the investigator conducted a DAS search for cameras, which yielded two results for cameras in this area (CE-CO61 and MS-CO44). However, neither camera had footage from the date and time of this incident. Furthermore, the investigator contacted a PO Torres at LMSI who confirmed that they had no footage of the incident location for the date and time of this incident. The patrol boro investigation determined there was not enough evidence to prove or disprove § 87(2)(b)'s allegations, and that they could not find any video of the incident nor confirm which officers were involved.

On November 6, 2020, the investigation received an additional audio recording from the patrol boro investigation that had not been included in the original Reznick request, and which was summarized by the investigation upon receipt **(Board Review 16 and 17)**. In this interview, § 87(2)(b) named the incident location as 14th Street and 5th Avenue, which conflicts with his original statement to the investigation in which he noted the incident location as 14th Street by Union Square Park. The third BWC request for this incident reflects the updated incident location.

Ranking Officers

The highest-ranking officer listed on the PBMS detailed roster from the evening of May 31, 2020

was Lieutenant Jermaine Oden (Tax 939136) from the 9th Precinct. The investigation also identified and interviewed Captain Julio Delgado who had no knowledge of this incident. Captain Delgado identified Deputy Inspector Andrew Ventrella of SRG in BWC footage. However, Deputy Inspector Ventrella was not interviewed as there was no indication that he witnessed, was in the immediate vicinity, or played any role in this incident.

Officers Interviewed

The investigation interviewed Lieutenant Jermaine Oden on October 22, 2020 (**Board Review 18**). In his interview, Lieutenant Oden stated that he was not in the vicinity of Union Square on May 31, 2020 because he was working a detail at the 9th Precinct Stationhouse at 321 E. 5th Street in Manhattan.

Lieutenant Oden did not remember having any interactions with § 87(2)(b) or any § 87(2)(b) man who appeared to be intoxicated, on May 31, 2020, nor did he remember any other officers interacting with a § 87(2)(b) man who appeared to be intoxicated.

On November 24, 2020, the investigation interviewed Officer Scott Pariona (**Board Review 19**), who was identified in Sgt. Verkay's BWC footage (**Board Review 1**) as an officer in the vicinity of Union Square around the alleged time of the incident. In his interview, PO Pariona stated that he did not recognize the name § 87(2)(b) nor did he remember having any interaction with a seemingly intoxicated § 87(2)(b) man. He remained in the vicinity of 12th and Broadway for most of that evening because he made an arrest and had to accompany his detainee to booking. He did not remember asking anyone to stop on 14th Street, nor was he aware of any officers stopping a man who matched the description of § 87(2)(b) that evening. When the investigation described the details of § 87(2)(b)'s allegations, PO Pariona stated that none of the events were familiar to him.

The investigation interviewed Sgt. Brian Verkay, identified from the BWC received, on December 7, 2020 (**Board Review 20**). Sgt. Verkay did not recall witnessing any of the allegations outlined in § 87(2)(b)'s complaint, nor did the name § 87(2)(b) seem familiar to him. He did not recall any other officers nor himself interacting with a § 87(2)(b) man who appeared to be intoxicated. Additionally, he arrived in the vicinity of 12th Street and Broadway around 9:50 p.m. on May 31, 2020, approximately two hours later than the time § 87(2)(b) alleged.

From his BWC shown in the interview, Sgt. Verkay identified Captain Julio Delgado from SRG 2 as one of the commanding officers on the scene.

The investigation interviewed Captain Julio Delgado on January 19, 2021 (**Board Review 21**). Captain Delgado did not remember interacting with any individual named § 87(2)(b) nor were § 87(2)(b)'s allegations familiar to him. He did not recall any other officers nor himself interacting with a § 87(2)(b) man who appeared to be intoxicated.

§ 87(2)(g)

§ 87(2)(g)

Civilian CCRB Histories

CCRB Case # 202004359

- This is § 87(2)(b)'s first complaint with the CCRB (**Board Review 22**)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- As of June 1, 2021, the Office of the Comptroller has no record of a Notice of Claim filed for this incident (**Board Review 23**).
- § 87(2)(b)

Squad No.: 10

Investigator:	<u>Michael Uhll</u>	<u>Inv. Z-Uhll</u>	<u>05/24/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>7/16/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date